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July 13, 2012

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: CONSUMER SIGNAL BOOSTERS
WT DOCKET NO. 10-4

Dear Ms. Dortch:

This letter is written on behalf of Wilson Electronics, Inc. ("Wilson") to address matters discussed at the meeting that was held on June 28, 2012, between representatives of AT&T, the Wireless Telecommunications Bureau, and the Office of the General Counsel. Apparently, the meeting "focused on the Commission's legal authority to authorize the use of third-party, consumer signal boosters on CMRS carriers' exclusive use spectrum." Letter from Michael Goggin to Marlene H. Dortch, WT Docket No. 10-4, at 1 (July 2, 2012) ("AT&T Letter"). AT&T reported that it argued that § 301 of the Communications Act of 1934, as amended ("Act"), prevents the Commission from authorizing the use of consumer signal boosters on "exclusive-use spectrum" without a license or licensee consent. *Id.* It also disclosed that the staff was considering "a signal booster licensing regime akin to blanket licensing for mobile handsets, in which licensee consent is required before a signal booster may be operated on a licensee's network." *Id.* Wilson is concerned that the Commission's adoption of a requirement that a CMRS consumer must obtain carrier/licensee consent before using a properly-designed signal booster would constitute a legally-unjustifiable policy reversal that would undermine the pro-consumer objectives of the signal-booster rulemaking and put the signal booster industry at risk.

On June 8, 2012, Wilson joined with Verizon Wireless, T-Mobile, USA, Inc., Nextivity, Inc., and V-COMM, L.L.C. in proposing two signal booster "safe harbors" for consideration by the Commission in the above-referenced rulemaking. The safe harbors spell out technical specifications for signal boosters that will ensure that the devices can be manufactured, certified,

marketed, and operated by consumers without harm to wireless networks. The joint proposal marked the culmination of an eight-month effort by Verizon Wireless and Wilson to fashion an industry-consensus, technology-neutral alternative to the Commission's current proposal to license signal boosters under Part 95. *See Amendment of Parts 1, 2, 23, 24, 27, 90 and 95 of the Rules to Improve Wireless Coverage Through the Use of Signal Boosters*, 26 FCC Rcd 5490, 5492 (2011) ("*NPRM*"). That effort proved successful when T-Mobile joined Verizon Wireless in urging the Commission to adopt technical standards for signal boosters. With the addition of T-Mobile, a leading CDMA network operator and a leading GSM carrier have publicly acknowledged that properly-designed consumer signal boosters can be deployed without harming their networks.

In their joint submission, the parties disclosed that they were unable to agree as to whether carrier consent should be required before a subscriber is authorized to operate a certified consumer signal booster. The Commission was notified that each party would be free to address the issue of carrier consent. The AT&T Letter made it an imperative that Wilson be heard on the issue.

Wilson will show that the Commission unquestionably has the authority to authorize the use of consumer signal boosters on exclusive-use spectrum. *See id*. at 5502. Wilson will also set forth the reasons why it believes that the imposition of a carrier-consent requirement would be wholly inconsistent with current Commission policy and would nullify Wilson's efforts at consensus building and jeopardize its business. Wilson will demonstrate the following.

- The *NPRM* proposed a new "license-by-rule" regulatory framework for consumer signal boosters for the purpose of ensuring that consumers have access to well-designed boosters that do not harm wireless networks. Part 95 was to be amended to authorize consumers to operate properly-certified signal boosters on licensed spectrum being used for subscriber-based services. *Under the proposed Part 95 rules, consumers were not required to obtain licensee or carrier consent to operate signal boosters that had been certified as complying with stringent technical and operational requirements*.

- Wilson fully supported the proposed Part 95 license-by-rule framework. Nevertheless, the Commission's staff urged Wilson to work with wireless carriers to try to develop technical standards under which consumer signal boosters could be operated under carrier licenses. Wilson acquiesced to the staff's request on the condition that no licensee consent would be required for subscribers to use signal boosters that met industry-consensus standards. *Now that carrier-backed technical standards have been negotiated, Wilson would be denied the benefit of what it bargained for (at the staff's request) if the Commission both adopted the technical standards and required carrier consent*.

- The whole purpose for either adopting stringent technical rules or establishing technical "safe harbors" would be to ensure that compliant signal boosters could be operated by consumers without adversely affecting network reliability, operation or management. Such technical safeguards serve to obviate the need for carrier consent and enable consumers to operate robust signal boosters to improve their wireless coverage as they deem necessary. Requiring consumers to obtain carrier consent prior to operating

compliant signal boosters would defeat the purpose of the safeguards. *Consumers will derive no benefit if the Commission constructs a safe harbor, within which properly-designed consumer signal boosters could be operated, and then authorizes carriers to block consumer access to that safe harbor.*

- If the Commission finds that the operation of a compliant consumer signal booster cannot cause harm to wireless networks, there would be no reasonable basis on which a carrier could withhold its consent to a consumer's use of a properly-certified, compliant signal booster. But a carrier's refusal to consent would adversely affect the subscriber's right to maximize the beneficial use of the wireless service and could have an anticompetitive effect. *If the Commission adopts a rule that requires consumers to obtain carrier consent to operate a compliant signal booster, the rule must explicitly provide that carrier consent to the use of compliant signal boosters cannot be unreasonably withheld.*

- The *NPRM* represented one of a set of Commission initiatives designed to promote deployment of mobile voice and broadband services in the United States and to facilitate the provision of mobile services in a manner that provides the greatest benefit to consumers. *To allow carriers to block consumer access to compliant signal boosters would be inconsistent with the Commission's policy priorities*.

- A licensee is not entitled to the unfettered discretion to prohibit compliant signal boosters by virtue of having paid a "market price" for its licensed spectrum. Congress did not diminish the Commission's authority to regulate, or supplant it as the ultimate steward of auctioned spectrum, when it authorized spectrum auctions. The Commission has repeatedly recognized that auctioned licenses do not convey any rights that differ from the rights that apply to licenses that were not purchased at a market price. *To cede authority to licensees of auctioned spectrum to deny consumers access to compliant signal boosters would be to subordinate the Commission's public interest determination to the proprietary, commercial interests of licensees.*

- The Commission staff is considering a blanket licensing regime under which CMRS carriers not only must consent to the use of compliant signal boosters, but are permitted to conduct "conformance testing" to determine if the boosters are compatible with their networks. Consumers who purchased certified signal boosters should not have to wait to use the devices while they undergo interminable and redundant conformance testing by carriers. *To require carrier consent and to authorize conformance testing will place two unnecessary and potentially insurmountable obstacles in the path of achieving the Commission's professed goal of broadening the use of signal boosters to enhance wireless coverage for consumers*.

BACKGROUND

The *NPRM* included a new "license-by-rule" regulatory framework for consumer signal boosters. *See* 26 FCC Rcd at 5501-02. Under the Commission's licensing-by-rule under Part 95 proposal, consumers would be free to choose to operate signal boosters that met "stringent technical and operational requirements," *id*. at 5502, without obtaining individual licenses or

carrier consent. *See id*. at 5622 (proposed § 95.1611). Wilson fully supported the Part 95 approach taken by the *NPRM* specifically because it would not permit carriers to block consumers' access to signal boosters which had been certified as meeting technical standards that safeguard wireless networks.

Wilson was not a proponent of the Commission's alternative regulatory approach under which the use of consumer signal boosters would be authorized under existing carrier licenses. *See NPRM*, 26 FCC Rcd at 5502. That approach called for the Commission to modify § 1.903(c) of its rules to explicitly authorize subscribers to use properly-certified fixed and mobile signal boosters. *See id.* Wilson was, and continues to be, of the view that § 1.903(c) currently authorizes such use. Moreover, Wilson opposed any regulatory approach that could leave carriers free to prohibit their subscribers from using properly-designed signal boosters that cause no harm to wireless networks. Nevertheless, five months after the release of the *NPRM*, the Commission's staff effectively asked Wilson to work in support of the Commission's alternative regulatory approach for signal boosters.

The staff urged Wilson to reach out to wireless carriers to see if industry-consensus technical standards could be developed for signal boosters which, if implemented, would allow compliant signal boosters to be operated by subscribers under carrier licenses. Wilson expressed its clear preference for the Commission's license-by-rule approach under Part 95, as well as its concern that the abandonment of the Part 95 approach would dissipate the carriers' incentives to work collaboratively to develop and deploy well-designed signal boosters. But Wilson acquiesced to the staff's request on the condition that, if a consensus on standards was reached and adopted by the Commission, no licensee consent would be required for subscribers to use signal boosters that have been certified as complying with the standards.

After pursuing an industry consensus on signal booster technical standards, Wilson reached an agreement with Verizon Wireless on a set of standards for consumer signal boosters that would safeguard wireless networks. On March 14, 2012, Wilson and Verizon Wireless jointly proposed Part 20 rules for adoption by the Commission that would codify the technical standards that would allow consumers to operate signal boosters under existing carrier licenses. *See* Letter from John T. Scott, III, Andre J. Lachance & Russell D. Lukas to Marlene H. Dortch, WT Docket No. 10-4 (Mar. 14, 2012). The parties agreed that the proposed signal booster rules need not include a provision requiring carrier consent prior to operation. Thus, proposed § 20.16 provided in pertinent part as follows:

> Consumer boosters operated by subscribers in good standing of a commercial mobile radio service system are considered to be operating under the authorization of that commercial mobile radio service system.… Subject to the requirements set forth below, consumer boosters that have been certificated in accordance with § 20.16(b) may be operated by a subscriber in good standing of a commercial radio service on the frequency bands listed in § 20.16(a).…
>
> …. Prior to operating any consumer booster, subscribers are required to register consumer boosters by contacting their service provider(s), and providing the following information: booster make and model number, FCC ID #, frequency

> bands supported, contact name, address, location of intended use, email, and mobile phone number.

Wilson's efforts to marshal carrier support for the proposed consumer-booster standards continued after the proposed Part 20 rules were proffered. Wilson was involved in discussions with T-Mobile and Sprint Nextel on April 23, 2012 – discussions that AT&T largely boycotted − when it learned that the staff preferred an approach under which the standards for consumer signal boosters would be not be included in the Commission's rules, but rather would be incorporated in a "technical safe harbor" that would be promulgated outside the rulemaking process, presumably under delegated authority. The uncertainty surrounding how the new safe-harbor framework would be implemented and enforced troubled Wilson. And it was during the process of gaining T-Mobile's approval of the modification of the previously-proposed Part 20 rules necessary to accommodate the staff's separate safe-harbor approach that an impasse was reached as to the need for a carrier-consent rule requirement.

Wilson refused to support rule changes that would simultaneously (1) require manufacturers to design consumer signal boosters to comply with carrier-approved technical standards to safeguard carrier networks and (2) authorize carriers to refuse to permit consumers to use signal boosters that were manufactured to comply with those carrier-approved standards. Furthermore, Wilson saw no public interest benefit in the Commission's construction of a safe harbor, within which properly-designed consumer signal boosters could be operated, if the Commission would invite carriers to block consumer access to that safe harbor. Accordingly, the carrier/Wilson version of proposed § 20.16 that was submitted on June 8, 2012 did not contain a carrier-consent provision. And the language of § 20.16 that was quoted previously was only revised as italicized below.

> Consumer boosters operated by subscribers in good standing of a commercial mobile radio service system are considered to be operating under the authorization of that commercial mobile radio service system.… Subject to the requirements set forth below *and in FCC-approved consumer booster protection safe harbors*, consumer boosters that have *received FCC certification pursuant to § 2.907 and* in accordance with § 20.16(b) may be operated by a subscriber in good standing of a commercial radio service on the frequency bands listed in § 20.16(a).…
>
> …. Prior to operating any consumer booster, subscribers are required to register consumer boosters *either electronically if the booster enables electronic registration or* by contacting their service provider(s), and providing the following information: booster make and model number, FCC ID #, frequency bands supported, contact name, address, location of intended use, email, and mobile phone number.

THE COMMISSION HAS THE TITLE III AUTHORITY TO REQUIRE FACILITIES-BASED CARRIERS TO ALLOW CONSUMERS TO USE CERTIFIED SIGNAL BOOSTERS

AT&T iterates its claim that § 301 of the Act prevents the Commission from authorizing

the use of consumer signal boosters on "CMRS carriers' exclusive-use spectrum without a license or licensee consent." AT&T Letter at 1. AT&T has been making that unsupported claim since early 2010. *See* Letter from M. Robert Sutherland to P. Michele Ellison, WT Docket No. 10-4, at 2-5 (Feb. 10, 2010). The claim was implicitly rejected in the *NPRM*, where the Commission held that it had the authority under § 307(e) of the Act to license the operation of consumer signal boosters under new Part 95 rules. *See* 26 FCC Rcd at 5502. When it explained its tentative conclusion that authorizing the operation of "properly certified signal boosters" by rule under § 307(e) would best serve the public interest, the Commission specifically noted:

> We are mindful that we propose to authorize operation of signal boosters on licensed spectrum. We thus propose that any such use would be on a secondary, non-interfering basis, and would have to meet our proposed technical parameters of operation, which are designed to prevent, control, and quickly resolve any interference should it occur.

Id.

Under the Commission's proposed Part 95 rules, consumers would have been authorized to operate certified signal boosters on licensed frequencies used for subscriber-based services without individual licenses or the consent of the licensees. *See id*. at 5532-33 (proposed §§ 95.1603 & 96.1611(a)). Clearly, the *NPRM* refutes AT&T's contention that § 301 prohibits the Commission from authorizing consumers to use signal boosters on CMRS exclusive-use spectrum.

AT&T also was wrong to state that properly-certificated signal boosters would not be eligible for "blanket licensing" under § 1.903(c) of the Commission's rules "unless a licensee consents to use of a signal booster on its network." AT&T Letter at 1. In fact, when it adopted CMRS "blanket licensing" in 1980, the Commission allowed subscribers to operate mobile units of their own choosing under the carrier's blanket authorization without obtaining the carrier's consent. *See Individual Radio Licensing Procedures*, 77 F.C.C. 2d 84, 85-86 (1980). A carrier could refuse or suspend service if a subscriber failed to meet the following requirements:

> The subscriber must comply with all applicable rules … must use [FCC] type accepted equipment only, must furnish the type accepted number to the carrier, must provide evidence to the carrier that the subscriber's mobile unit is compatible with the carrier's mobile system, must use only those mobile units which the carrier has agreed to serve, and must take prompt action to eliminate any unacceptable interference which the subscribers mobile unit may cause to the mobile system or to other users.

Id. at 86. *See* 47 C.F.R. §§ 22.500 & 22.514 (1980).

As Wilson has established, the Commission has never promulgated a rule that required CMRS subscribers in good standing to obtain the consent of the licensee providing their service before operating mobile or fixed stations under, and in accordance with, the authorization held by the licensee. *See* Wilson, Petition for Rulemaking, WT Docket No. 10-4, Attach. 3 at 2-7

(Nov. 3, 2009). The lack of such a rule clearly prompted CTIA to request a declaratory ruling on the issue of carrier consent in 2007. *See* Petition for Declaratory Ruling of CTIA – The Wireless Association®, WT Docket No. 10-4, at 10-14 (Nov. 2, 2007). If there had been a rule that could and should have been construed to require licensee consent prior to a subscriber's use of a signal booster, the Commission would have issued a declaratory ruling to terminate the controversy over carrier consent in its *NPRM*. *See* 47 C.F.R. § 1.2. But the Commission declined to act on CTIA's petition for a declaratory ruling. *See NPRM*, 26 FCC Rcd at 5492 n.8.

The notion that signal boosters are ineligible for blanket licensing under § 1.903(c) absent carrier consent was also rejected in the *NPRM*. The Commission's alternative regulatory proposal was to modify § 1.903(c) "to authorize the use of properly certificated fixed and mobile signal boosters by subscribers and non-subscribers." *Id*. at 5502. The Commission chose not to propose both blanket licensing of certified signal boosters under § 1.903(c) and a requirement that a subscriber obtain the carrier's consent to use a blanket-licensed booster.

Considering the alternative regulatory approaches proposed in the *NPRM*, it would surpass strange for the Commission to promulgate both technical standards for consumer signal boosters *and* a carrier-consent requirement. Under both approaches, compliance with "stringent technical and operational requirements" for consumer signal boosters that would safeguard CMRS networks would render carrier approval unnecessary. *Id.* at 5502. The *NPRM* did not put the public on notice that the Commission was considering a regulatory framework that would authorize licensees to deny consumers access to properly certificated signal boosters.

Regardless, the Commission cannot concede that it is without legal authority to authorize the use of third-party consumer signal boosters on CMRS exclusive use spectrum. The day after releasing the *NPRM,* the Commission reaffirmed that "[s]pectrum is a public resource," and that Title III of the Act provided it "with broad authority to manage spectrum, including allocating and assigning radio spectrum for spectrum based services and modifying spectrum usage conditions in the public interest." *Reexamination of Roaming Obligations of CMRS Providers and Other Providers of Mobile Data Services*, 26 FCC Rcd 5411, 5440 (2011) ("*Data Roaming Order*"). Citing § 301 of the Act, it also reaffirmed that the issuance of one of its licenses "does not convey any ownership or property interests in the spectrum and does not provide the licensee with any rights that can override the Commission's proper exercise of its regulatory power over the spectrum." *Id.* Moreover, it recognized that § 303 empowered it to, *inter alia*, establish operational obligations for licensees, and that § 316 authorized it to adopt new conditions on existing licenses. *See id.* at 5440-41. The Commission found that its authority "to manage spectrum and establish and modify license and spectrum usage conditions," *id*. at 5412, allowed it to promulgate a data roaming rule in order to "allow consumers with mobile data plans to remain connected when they travel outside their own provider's network coverage areas by using another provider's network." *Id*. at 5411.

The fact that a licensee has purchased CMRS exclusive-use spectrum either at auction or in the secondary market does not exempt it from Commission regulation in the public interest. Congress did not diminish the Commission's authority to regulate, or supplant it as the ultimate steward of auctioned spectrum, when it authorized spectrum auctions in 1997. *See* 47 U.S.C. § 309(j)(6)(C). By law, auctioned licenses do not convey an ownership interest in the licensed

spectrum. *See* 47 U.S.C. § 301. In fact, auctioned CMRS licenses do not convey any rights that differ from the rights that apply to CMRS licenses that were not purchased at a market price. *See id*. § 309(j)(6)(D). Nor do spectrum purchasers acquire the exclusive right to use auctioned spectrum. *See id*. §§ 309(h)(3), 606. The Commission proved that in 2007, when it required CMRS carriers to provide roaming services to other carriers in order to "safeguard wireless consumers' reasonable expectations of receiving seamless nationwide commercial mobile telephony services through roaming." *Reexamination of Roaming Obligations of CMRS Providers*, 22 FCC Rcd 15817, 15819 (2007).

The Commission clearly has the authority under Title III to require a CMRS carrier to allow its own subscribers to operate properly-designed signal boosters on its exclusive-use spectrum so that they can remain connected when they travel within its network coverage area. Thus, the Commission has the Title III power to subordinate a licensee's right to use licensed spectrum to the right of its subscribers to use non-interfering signal boosters to maximize the benefits of the wireless service they pay to receive. After all, CMRS is a subscriber-based service, not a carrier-based service. *See NPRM*, 26 FCC Rcd at 5491 n.3.

A CARRIER-CONSENT RULE REQUIREMENT WOULD UNDERMINE THE COMMISSION'S PRO-CONSUMER POLICY OBJECTIVES AND NULLIFY ITS TECHNICAL SAFE HARBOR

The license-by-rule regulatory framework that was proposed in the *NPRM* was "one element in a set of initiatives designed to promote deployment of mobile voice and broadband services in the United States." 26 FCC Rcd at 5491. As the Commission explained:

> The regulatory framework … seeks to create appropriate incentives for carriers and manufacturers to collaboratively develop robust signal boosters that do not harm wireless networks. This, in turn, will enable consumers to improve their cell phone coverage *as they deem necessary*. The public interest is best served by ensuring that consumers have access to well-designed boosters that do not harm wireless networks.

Id. (emphasis added).

Obviously underlying the license-by-rule framework was the pro-consumer policy priority that the Commission reaffirmed in its *Data Roaming Order*. The Commission afforded consumers with mobile data plans access to CMRS networks in furtherance of the Commission's policy goal of "facilitating the provision of mobile services in a manner that provides the greatest benefit to consumers." *Data Roaming Order*, 26 FCC Rcd at 5415.

As noted above, the *NPRM* clearly found that consumers would derive the greatest benefit from their wireless service if they "have access to well-designed boosters that do not harm wireless networks" that would enable them "to improve their cell phone coverage *as they deem necessary*." The Commission proposed to empower consumers to operate signal boosters without obtaining individual licenses - and without obtaining prior carrier consent - "provided that the devices fully comply with (1) all applicable technical and RF exposure rules, and (2) a set of parameters crafted to prevent and control interference and rapidly resolve interference

should it occur." *NPRM*, 26 FCC Rcd at 5501. The Commission tentatively concluded that the best approach would not be to authorize signal booster use under existing carrier licenses. *See id.* at 5502. Rather, it chose to proceed pursuant to its authority under § 307(e):

> We believe that a license-by-rule framework would be the best approach for enabling operation of properly certificated signal boosters, particularly because it would obviate the need for burdensome individual licensing requirements. Our proposed regulatory framework would facilitate operation of signal boosters to enhance wireless coverage and access to broadband services, while minimizing administrative costs and burdens on the public, Commission licensees, and agency staff, thus serving the public interest,

Id. at 5501.

The joint submission of the technical standards or safe harbors is the only significant, substantive addition to the public record since the comments were filed in Docket No. WT 10-4. The record includes evidence that Verizon Wireless and T-Mobile agree that the imposition of technical and operational requirements will ensure that signal boosters can be operated by consumers without harming their networks. Thus, the record shows that the Commission can achieve its policy goal of affording consumers access to well-designed signal boosters that they can choose to operate to improve coverage as they deem necessary. Wilson is at a loss to understand why the Commission would for a moment consider adopting technical standards or safe harbors while at the same time requiring consumers to obtain the permission of their wireless service providers to operate signal boosters that either meet the standards or are within a safe harbor.

If carriers are going to be authorized to block consumer access to compliant signal boosters, it would be reasonable to question why Wilson was encouraged to collaborate with carriers to develop stringent technical and operational requirements for consumer signal boosters. Indeed, one wonders what would be the purpose of requiring manufacturers like Wilson to design signal boosters to meet Commission standards for consumer use, if consumers are given no right to use the compliant boosters. Likewise, if carriers are allowed to prevent consumers from operating signal boosters within a technical safe harbor, what refuge or protection would that safe harbor provide to consumers or Wilson?

All that the Commission would accomplish by requiring carrier consent would be to empower licensees to arbitrarily prohibit consumers from using signal booster to improve coverage without network harm, thereby depriving them of their right to choose to operate properly-designed signal boosters in order to receive the maximum benefit from their wireless service. To abandon the license-by-rule framework in favor of an authorization-by-carrier approach would signify that the Commission had changed its pro-consumer policy to a pro-carrier policy that would not serve the purposes for which this rulemaking was conducted. In short, to superimpose a carrier-consent requirement on carrier-approved technical standards would constitute a startling, inexplicable policy reversal.

REQUIRING CARRIER CONSENT WILL IMPEDE CONSUMER USE OF BROADBAND SIGNAL BOOSTERS

Consumers will get the greatest benefit of CMRS if they can use mobile signal boosters that are capable of operating over the full range of frequencies used for subscriber-based services under Parts 22, 24 and 27 of the Commission's rules. Such "broadband" signal boosters are affordable and are particularly useful when subscribers are roaming. The operation of a mobile broadband signal booster currently does not constitute a cognizable use of a carrier's exclusive-use CMRS spectrum.

When a mobile broadband booster amplifies the downlink signals from a base transmitter, it is operating on a frequency exclusively licensed to a CMRS carrier, but it does so at Part 15 power levels. No license is necessary to operate a device within Part 15 limits, so no licensee consent should be necessary. A mobile broadband booster only exceeds Part 15 levels when it is used by a subscriber to amplify uplink signals. However, when doing so, the signal booster is amplifying the signals of the subscriber's handset which is transmitting on mobile frequencies under the authorization held by the subscriber's CMRS provider. *See* 47 C.F.R. § 1.903(c) ("Authority for subscribers to operate mobile or fixed stations … is included in the authorization held by the licensee providing service to them"). Thus, the mobile broadband booster either transmits under the CMRS carrier's license, or at a power level that requires no authorization.

There would be no specter of the unlicensed operation of broadband boosters under the Commission's proposed license-by-rule under Part 95 proposal. But the issue of unlicensed operation will arise under the staff's proposed blanket licensing regime. Carriers will be able to argue, as AT&T did at the June 28, 2012 meeting, that "a single carrier's consent to use a broadband signal booster on its network cannot authorize the use of that device on another carrier's network, even though that device is capable of amplifying signals on multiple carrier networks." AT&T Letter at 2. By requiring consumers to obtain licensee consent before they can use a certified broadband booster, the Commission would be fostering legal disputes that currently do not arise. For under the staff's proposal, even the "fleeting" use of a broadband signal booster on the network of a non-consenting carrier could be deemed a violation of § 301 of the Act. *Id.*

To force consumers to obtain the consent of multiple CMRS carriers before operating a broadband signal booster would be anathema to the Commission if it intends to broaden consumer use of compliant boosters. The adverse impact of the staff's carrier-consent proposal on broadband booster use is another indication that the staff is moving away from the Commission's goals for this proceeding.

THE STAFF'S PROPOSED BLANKET LICENSING REGIME WILL MAKE IT MORE DIFFICULT FOR CONSUMERS TO USE CERTIFIED SIGNAL BOOSTERS

According to AT&T, the staff is considering a blanket licensing regime that "would allow for licensee conformance testing to determine if a signal booster is compatible with a licensee's network." AT&T Letter at 1. Implementation of such a regime would be bad from a public

policy standpoint and would effectively stymie consumers who purchase compliant signal boosters.

The *NPRM* was supposed to incentivize carriers and manufacturers "to collaboratively develop robust signal boosters that do not harm wireless networks." 26 FCC Rcd at 5491. Verizon Wireless, T-Mobile and Wilson worked collaboratively for months to develop standards for signal boosters that provide protection for all CMRS network technologies. AT&T, on the other hand, elected not to collaborate. Having chosen to sit on the sidelines, when it could have played a role in formulating standards to ensure that consumer signal boosters are compatible with its network, now AT&T wants to needlessly conduct "conformance testing" of certified signal boosters that have already been tested by a telecommunications certification body ("TCB") against industry and Commission-approved standards. The Commission should not reward non-cooperating carriers like AT&T by giving them the right to retest TCB-tested signal boosters before they can be used by consumers.

If the Commission imposes new technical standards, requires carrier consent, and authorizes carrier conformance testing, consumers will be in a far worse position than they were before the Commission initiated this rulemaking ostensibly to "broaden the availability and use of signal boosters to enhance wireless coverage for consumers." *NPRM*, 26 FCC Rcd at 5494. Wilson's one experience with carrier testing was an exercise in futility. The effort took nearly a year, engendered $27,200 in expenses, and never produced a decision. Surely, the Commission cannot reasonably expect consumers to purchase TCB-tested and certified signal boosters and then have to wait indefinitely while the devices undergo compliance testing by carriers. But that is apparently what AT&T wants.

It seems that AT&T supports an "explicit carrier consent requirement" under which licensees could approve requests from individual subscribers to use signal boosters on a case-by-case basis. AT&T Letter at 1. AT&T apparently wants the right to perform conformance tests after a subscriber requests its consent to use a certified signal booster. Surely, AT&T is not suggesting that it be allowed to test the signal booster that the subscriber has just purchased. And having already paid TCBs to certify their products, manufacturers should not be required to incur the additional expense of providing certified signal boosters to AT&T for testing. Regardless of how AT&T proposes to perform conformance testing, those tests will entail additional expenses and impose wholly-unnecessary burdens on consumers and manufacturers alike.

By advocating conformance testing of compliant signal boosters, AT&T is effectively saying that it does not trust the engineering judgment of Verizon Wireless, T-Mobile, and ultimately the Commission itself. By advocating a carrier-consent requirement that would force consumers to wait until conformance testing is complete before they can use the devices, AT&T is asking the Commission to adopt a licensing scheme that would make signal boosters the least desirable to consumers. The best that can be said about AT&T's proposal is that it represents a last ditch attempt to obstruct the public interest, an effort which is reminiscent of the company's actions in the days of the wireline network interconnection wars. At worst, AT&T's approach can been seen as a calculated attempt to kill the independent signal booster industry.

The Commission's rules currently do not explicitly "allow" for carrier conformance testing of mobile handsets, much less signal boosters. AT&T Letter at 1. And there is no reason for the Commission to adopt a rule that "allows" carriers to conduct such tests. Carriers will remain free to conduct conformance testing of mobile devices that will operate on their wireless networks. But the Commission cannot authorize carriers to withhold their consent to use certified signal boosters until conformance testing is successfully completed. In the unlikely event that carrier testing shows that a compliant signal booster could compromise network reliability, the carrier could present its test results to the Commission to reevaluate the certification of the particular device.

Rather than broadening the availability of consumer signal boosters that do not harm networks, the proposed blanket licensing regime will construct two unnecessary and potentially insurmountable obstacles to the deployment of well-designed consumer signal boosters. If the Commission adopts signal booster standards that safeguard wireless networks, there is simply no technical, legal, policy or practical reason for the Commission to require carrier consent or to authorize conformance testing. By putting those two obstacles in place, the Commission will provide carriers with the means to continue to block consumer access to compliant signal boosters or to unconscionably delay their use by conducting interminable and redundant testing. The inevitable end result will be litigation, a result which neither Wilson nor the Commission desires.

CMRS CARRIERS CANNOT BE GIVEN THE UNFETTERED DISCRETION TO WITHHOLD CONSENT TO USE CERTIFIED CONSUMER SIGNAL BOOSTERS

The promulgation of a Part 20 rule that codifies technical and operational requirements for consumer signal boosters, or the adoption of a technical safe harbor for such devices, would constitute a Commission finding that the operation of compliant boosters by consumers presumably serves the public interest. Consequently, a carrier's refusal to permit its subscribers to use compliant signal boosters would be presumed to be contrary to the public interest. If it grants CMRS licensees the unfettered discretion to deny their subscribers access to certified non-interfering signal boosters, the Commission would be inviting Title III licensees to engage in conduct that is unlawful under Title II.

CMRS licensees are subject to §§ 201 and 202 of the Act. *See* 47 C.F.R. § 20.15(a). Section 201(a) of the Act requires CMRS carriers "to furnish such communications service upon reasonable request therefor." 47 U.S.C. § 201(a). Section 201(b) provides in pertinent part as follows:

> All charges, practices, classifications, and regulations for and in connection with [interstate communication by radio], shall be just and reasonable, and any such practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful …. The Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter.

47 U.S.C. § 201(b).

Section 202(a) of the Act provides:

> It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person … or to subject any particular person … to any undue or unreasonable prejudice or disadvantage.

Id. § 202(a).

CMRS providers are also subject to the provisions of §§ 206-209 of the Act which make them liable for damages caused by their violations of the Act. *See* 47 C.F.R. § 20.15(a). Consequently, if a CMRS carrier's refusal to permit the use of a certified signal booster is found to deny a reasonable request for service in violation of § 201(a), or to be an unjust or unreasonable practice under § 201(b), or to be an unjust or unreasonable discrimination in practices under § 202(a), a party claiming to be damaged by a CMRS carrier's violation of § 201 or § 202(a) could bring a civil action for damages in federal court under § 206 or file a complaint for damages with the Commission under § 208, but not both. *See* 47 U.S.C. § 207.

Wilson respectfully submits that CMRS carriers cannot simply be handed *carte blanche* to prohibit consumer use of compliant signal boosters. If it feels compelled for some reason to require carrier consent to use compliant boosters, the Commission should recognize that carrier consent to a consumer's reasonable request to use a compliant signal booster is a Title II obligation. Therefore, it should explicitly declare that a carrier would violate § 201 and/or § 202(a) if it unreasonably withheld its consent, or if it unreasonably discriminated among requests for consent, to use such boosters. In addition, the Commission should recognize that persons or entities harmed by such violations have a private right of action for damages under § 207 either in federal district court pursuant to § 206 or before the agency pursuant to § 208. *See* Peter W. Huber, Michael K. Kellog & John Thorne, *Federal Telecommunications Law* § 3.14.3, at 316 (2d ed. 1999).

Wilson also suggests that the Commission formally establish a rebuttable presumption that a CMRS subscriber's request to use a compliant signal booster is reasonable, which would effectively shift the burden of proof to the CMRS licensee to demonstrate that the operation of the booster would cause harmful interference to its network. The Commission established such a presumption when it adopted its automatic roaming rule. *See Automatic Roaming Order*, 22 FCC Rcd at 15831; *Reexamination of Roaming Obligations of CMRS Providers and Other Providers of Mobile Data Services*, 25 FCC Rcd 4181, 4199-4201 (2010). *See also* 47 C.F.R. § 20.12(d).

Finally, the Commission should consider adopting streamlined formal and informal complaint procedures that afford consumers with cost-effective remedies for a carrier's unreasonable or discriminatory refusal to allow the use of a compliant signal booster. The Commission adopted such procedures specifically for allegations that mobile broadband Internet access service providers did not comply with the Commission's open Internet rules. *See*

Preserving the Open Internet, 25 FCC Rcd 17905, 17986-89 (2010); 47 C.F.R. §§ 8.12-8.17.

Wilson respectfully requests the Commission to consider the foregoing when weighing the need to require consumers to obtain the consent of their service providers to use signal boosters that comply with the technical standards or safe harbors that appear to be forthcoming from this rulemaking. Should any questions arise with regard to Wilson's position on this matter, please direct them to me.

Very truly yours,

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